

No. 10639

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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ALEXANDER CHASKIN, Doing Business as  
Chaskin Citrus Co.,

Appellant,

vs.

HOWARD W. THOMPSON,

Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

FILED

JAN 18 1944

PAUL P. O'BRIEN  
CLERK



No. 10639

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Circuit Court of Appeals  
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Central Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

G. V. WEIKERT

818 Oviatt Bldg.  
Los Angeles, Calif.

For Appellee:

CHARLES H. CARR,

United States Attorney,

JAMES L. CRAWFORD,

Assistant United States Attorney,

W. W. WORTHINGTON,

Assistant United States Attorney,  
600 U. S. Post Office and Court House  
Bldg.

Los Angeles 12, Calif. [1\*]

In the Superior Court of the State of California  
In and For the County of Los Angeles

No. 487571

ALEXANDER CHASKIN, doing business as  
CHASKIN CITRUS CO.,

Plaintiff,

vs.

HOWARD W. THOMPSON,

Defendant.

### COMPLAINT

(Damages for Interference with Business)

Plaintiff complains of defendant and alleges:

#### I.

That at all times herein mentioned plaintiff was and now is a resident of the County of Los Angeles, State of California, and at all of said times plaintiff was and now is doing business under the firm name and style of Chaskin Citrus Co., with his principal place of business located in said County and State; that prior to the commencement of this action, plaintiff duly complied with the provisions of Sections 2466 and 2468 of the Civil Code of the State of California, by filing in the office of the County Clerk of said County a certificate stating his name in full and his place of residence, and stating further that he was doing business in California under the fictitious name of Chaskin Citrus Co., and by causing said certificate to be duly [2] published, and an affidavit showing such publication



to be duly filed, all in accordance with the provisions of said Sections.

## II.

That at all of said times defendant was and now is a resident of the County of Los Angeles, State of California.

## III.

That at all of said times plaintiff was and now is engaged in the business of buying and selling, at wholesale, citrus fruits grown in the State of California, including oranges; that in the course of said business plaintiff made and entered into contracts, agreements, and continuing business relations with packers of citrus fruit in said State to supply and sell oranges to him, and with brokers in said State to procure oranges for him, in order that he might resell the same to his customers at a profit.

## IV.

That on or about the 2nd day of August, 1943, plaintiff had such contracts, agreements, and business relations with numerous packers and brokers of citrus fruit in the State of California to sell to and procure for him packed boxes of oranges, and plaintiff had numerous orders from customers to purchase such oranges from him at prices which would have netted him a very substantial profit.

## V.

That on or about said date, and every day thereafter, defendant, knowing of the existence of said contracts, agreements, and business relations, wrong-

fully, unlawfully, and intentionally solicited said packers and brokers to breach their said contracts and agreements with plaintiff, and to terminate their said business relations with him, and wrongfully, unlawfully, and intentionally interfered with plaintiff's said business, and with plaintiff's rights under his said contracts, agreements and business relations, as hereinafter more particularly set forth.

[3]

## VI.

That defendant called upon and communicated with said packers and brokers and sought to induce and coerce them to breach their then existing contractual and business relations with plaintiff, by falsely, fraudulently and maliciously stating and representing to such packers and brokers that as an employee of the United States Department of Agriculture he had the lawful power and authority to cause them, and each of them, to suffer great loss, injury and damage by causing priorities for farming and packing equipment, machinery, and supplies to be withheld from and denied to them, and by causing their gasoline rations to be curtailed and restricted, and by causing suits and proceedings to be brought against them for various penalties and forfeitures, whenever he chose so to do, and by stating, representing and threatening that he would exercise such pretended power and authority against them unless they breached their said contracts and agreements with plaintiff, and terminated their said business relations with plaintiff, and refrained from selling to plaintiff or procuring for him any oranges whatever.

## VII.

That all of the foregoing was done by defendant for the purpose and with the intention of preventing plaintiff from obtaining supplies of oranges to fill the orders of plaintiff's customers, and of injuring and damaging plaintiff and bringing about the failure and destruction of plaintiff's said business.

## VIII.

That by means of the said wrongful and unlawful acts, statements, and conduct, defendant did induce, intimidate, and coerce said packers and brokers to breach their said contracts and agreements with plaintiff, and to terminate their said business relations with him; that as the direct and proximate result thereof said packers and brokers did cancel and breach their said [4] contracts and agreements with plaintiff, and did refuse to comply with or fulfill the same, and did terminate and refuse to enter into or continue business relations with plaintiff, and did refuse to furnish, sell to or procure for plaintiff further supplies of oranges; that plaintiff was thereby prevented from purchasing or procuring approximately three hundred carloads of oranges which said packers and brokers had undertaken and agreed to sell to or procure for plaintiff, and which they would have sold to or procured for him, but for the said wrongful and unlawful interference on the part of defendant; and that by reason thereof plaintiff was unable to fill his customers' orders for said oranges, and plaintiff lost said business and the profits which he would have derived

and realized therefrom, and the good will attaching to plaintiff's said business was thereby injured and damaged, all to plaintiff's damage in the sum of \$50,000.00.

### IX.

That when defendant made said false and fraudulent statements and representations to said packers and brokers, and threatened them as aforesaid, and thereby intimidated and coerced them to breach their contractual obligations with plaintiff and to refuse to enter into or continue their business relations with plaintiff, defendant well knew that he had no lawful right so to do, and defendant also well knew that plaintiff needed the oranges which said packers and brokers had contracted and agreed to sell to or procure for plaintiff in order to fill the orders of plaintiff's customers, and in order to conduct and carry on plaintiff's said business; that nevertheless, defendant, wrongfully, fraudulently, and maliciously desiring and intending to interfere with and disrupt plaintiff's said business, and to destroy the same, and thereby to cause plaintiff to suffer great loss, injury and damage, did all of the aforesaid acts and things, and pursued the aforesaid course of conduct, wilfully, fraudulently, oppressively, and maliciously, and [5] with reckless disregard for the rights of plaintiff; that by reason of the foregoing, plaintiff is entitled to recover from defendant, as exemplary and punitive damages, the additional sum of \$150,000.00.

Wherefore, plaintiff prays for judgment against defendant in the sum of \$50,000.00, actual damages,

and \$150,000.00, exemplary and punitive damages; for plaintiff's costs herein expended and incurred; and for such other and further relief as to the Court may seem meet and proper in the premises.

G. V. WEIKERT.

Attorney for Plaintiff.

State of California

County of Los Angeles—ss.

Alexander Chaskin being by me first duly sworn, deposes and says: that he is the Plaintiff in the above entitled action; that he has read the foregoing Complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

ALEXANDER CHASKIN

Subscribed and sworn to before me this 17th day of August, 1943.

[Seal] ELEANOR SWAN

Notary Public in and for the County of Los Angeles, State of California

[Endorsed]: Filed Aug 17 1943 3:43 PM J. F. Moroney, County Clerk By L. Foster, Deputy.

[Endorsed]: Filed Oct 4, 1943 Edmund L. Smith, Clerk By John A. Childress, Deputy Clerk.

[6]

[Title of Superior Court and Cause.]

NOTICE AND MOTION AND PETN.  
FOR REMOVAL

To Alexander Chaskin, Plaintiff, and G. V. Weikert, Esquire, his attorney:

Please Take Notice that Howard W. Thompson, the defendant in the above-entitled cause, by and through Charles H. Carr, United States Attorney, and Wm. W. Worthington, Assistant United States Attorney, will, on the 7th day of September, 1943, file in the Superior Court of the State of California, in and for the County of Los Angeles, and in the Clerk's office thereof in which said suit is now pending, his petition and bond for the removal of said suit and cause from said court to the United States District Court for the Southern District of California, Central Division, and that on the 14th day of September, 1943, at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, said petition and bond will be called up for hearing and disposition [7] before the Law and Motion Department of said state court, at which time and place you may be present.

Dated: September 6, 1943.

CHARLES H. CARR,

United States Attorney.

WM. W. WORTHINGTON,

Assistant U. S. Attorney.

By: WM. W. WORTHINGTON

Attorneys for Defendant [8]



[Title of Superior Court and Cause.]

## PETITION FOR REMOVAL

Comes Now the above-named defendant, by and through Charles H. Carr, United States Attorney, and Wm. W. Worthington, Assistant United States Attorney, and presents this his Petition for the removal of the above-entitled cause to the United States District Court for the Southern District of California, Central Division, and in his behalf respectfully shows:

### I.

That Charles H. Carr, United States Attorney and Wm. W. Worthington, Assistant United States Attorney, have been authorized and directed by the Attorney General of the United States to so appear for and on behalf of the above-named defendant.

### II.

That said defendant herein was at all time mentioned in plaintiff's Complaint herein, and still is, Field Representative of the Secre- [9] tary of Agriculture of the United States of America, and Field Representative of the Fruit and Vegetable Branch of the Food Distribution Administration of the War Food Administration, an instrumentality and agency of the United States, engaged in the exercise of federal governmental duties and powers; and that said War Food Administration is and was at all of the times mentioned in said plaintiff's Complaint, and herein mentioned, existing under and by virtue of an Executive Order of the President of

the United States of America, issued the 5th day of December, 1942, being Executive Order No. 9280, for the purpose and intent set forth therein.

### III.

That the above-entitled action is of a civil nature and is brought to recover alleged damages for alleged interference with plaintiff's business on the ground that, among others, the defendant falsely, fraudulently, and maliciously stated and misrepresented his powers as an employee of the United States Department of Agriculture.

### IV.

That said above-entitled action is one arising under the laws and the Constitution of the United States of America, in that said defendant is an officer of the United States; and in all of the matters set forth in plaintiff's Complaint herein, acting for and on behalf of the United States, particularly requiring construction and interpretation of:

1. First War Powers Act of 1941, Act December 18, 1941, C. 593; 55 Stat. 838; Title 50, U.S.C.A., Sec. 601, et seq.;
2. Title I of an Act of Congress approved May 12, 1933 (48 Stat. 31, 7 U.S.C.A. 601, et seq.) as amended May 9, 1934 (48 Stat. 672) and August 24, 1935 (49 Stat. 750), and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, approved [10] June 3, 1937 (50 Stat. 246, 247); and



3. Executive Order No. 9280, issued December 5, 1942.

V.

That the amount in controversy at the commencement of this action and at the present time exceeds the sum or value of Three Thousand Dollars (\$3,000), exclusive of interest and costs.

VI.

That the time within which the petitioner is required by the laws of this state, and the rules and orders of this court, to answer, demur, or otherwise plead to the Complaint herein has not yet expired.

VII.

Petitioner presents herewith a bond conditioned that he will enter in the District Court of the United States for the Southern District of California, Central Division, within thirty days from the date of filing of this petition, a certified copy of the record in this suit, and that he will pay all costs that may be awarded by said district court in case said court shall hold that this suit was wrongfully or improperly removed thereto.

VIII.

That prior to the filing of this petition and of said bond for the removal of this cause, written notice of the intention to file the same was given by petitioner to the plaintiff as required by law, a true copy of which, with proof of service of the same, is attached hereto.

## IX.

That the above-entitled action or suit is now pending in this court.

Wherefore, Petitioner Prays:

That said bond may be accepted as good and sufficient, and that this court will make its Order for the removal of said cause into [11] the District Court of the United States for the Southern District of California, Central Division, pursuant to Title 28, United States Code, Sections 71 and 72, and cause the record herein to be removed to said District Court, and that no other or further proceedings may be had in said cause in this court.

Dated: September 7, 1943.

CHARLES H. CARR

United States Attorney

WM. W. WORTHINGTON

Assistant U. S. Attorney

Attorneys for Petitioner

By: WM. W. WORTHINGTON [12]

United States of America,  
Southern District of California—ss.

Howard W. Thompson, being first duly sworn, deposes and says:

That he is the Petitioner above-named and is the defendant in the foregoing action;

That he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated to be alleged on in-

formation and belief, and as to those matters, he believes it to be true.

HOWARD W. THOMPSON

Subscribed and Sworn to before me this 7 day of September, 1943.

EDMUND L. SMITH, Clerk,

United States District Court,

By: JOHN A. CHILDRESS

[Seal]

Deputy [13]

POINTS AND AUTHORITIES

Points and Authorities To Sustain Defendant's  
Petition For Removal

I.

This case is one in which the United State District Courts have original jurisdiction, as it necessarily involves the powers and authorities of an officer and/or employee of the United States Government, purporting to have acted within the scope of such official position. It is, therefore, necessary to interpret and construe federal law to determine whether or not defendant herein had such power and authority; more particularly:

1. War Powers Act of 1941;
2. Title 7, U. S. C., Section 601 et seq.; and
3. Executive Order No. 9280, issued December 5, 1942.

II.

This case, therefore, is one arising under the Constitution and the Laws of the United States of America, and as such, is removable upon petition of the defendant to the United States District Court.

Feibelman v. Packard, 109 U.S. 421, 27 L. Ed. 984;

Title 28, United States Code, Sections 71 and 72;

Cox v. New Hampshire, 312 U. S. 569;

Wood v. Drake, 70 Fed. 881;

Winters v. Drake, 102 Fed. 545;

Scott v. Railroad Company, 112 Fed. 180.

Received copy of the within Notice and Petition for Removal and Bond this 7th day of September, 1943. G. V. Weikert, Attorney for Plaintiff.

[Endorsed]: Filed Sep 7 2:50 PM 1943 J. F. Moroney, County Clerk By M. Enfield, Deputy.

[Endorsed]: Filed Oct 4, 1943 Edmund L. Smith, Clerk By John A. Childress, Deputy Clerk.  
[131½]

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[Title of Superior Court and Cause.]

#### BOND ON REMOVAL OF CAUSE

Know All Men By These Presents:

That Howard W. Thompson, as Principal, and the Commercial Casualty Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and doing business in the State of California pursuant to the laws thereof, and authorized by the laws of the State of California to become surety on bonds of undertaking in said state, as surety, are held and firmly bound unto Alexander Chaskin dba Chaskin

Citrus Co., plaintiff in said action, in the sum of Five Hundred And No/100 Dollars (\$500.00) lawful money of the United States, to be paid to the said plaintiff, their successors or assigns; for which payment, well and truly to be made, said undersigned, jointly and severally bind themselves, their successors and assigns, firmly by these presents.

Sealed with our seals and dated this 7th day of September, 1943.

The Condition of the above obligation is such that:

Whereas, said defendant has applied by Petition to the above Superior Court of the State of California in and for the County of Los Angeles for the removal of the above entitled action therein pending unto the District Court of the United States, in and for the Southern District of California, Central Division, as provided by law;

Now, Therefore, if said Defendant shall enter in said District Court of the United States, in and for Southern District of California, Central Division, within thirty (30) days from the date of the filing of said Petition, a certified copy of the record of said action, and shall pay all costs that may be awarded therein by said District Court of the United States, in and for the Southern District of California, Central Division, if said District Court shall hold that said action was wrongfully or improperly removed thereto, then this obligation shall

be void; otherwise, it shall be and remain in full force and effect.

(Signed) HOWARD W. THOMPSON  
COMMERCIAL CASUALTY  
INSURANCE COMPANY

By:

Attorney-in-Fact

Approved this 10th day of Sept., 1943, H. C. Shepherd, Court Commissioner of Los Angeles County.

Copy

WWW-ADA

State of California

County of Los Angeles—ss.

On this 7th day of September in the year One Thousand Nine Hundred and forty-three before me, Gladys E. Metcalf, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Helen A. Vanderpluym known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Commercial Casualty Insurance Company (a corporation) and acknowledged to me that ....he subscribed the name of said Corporation thereto as surety and *his* own name as attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the

said County of Los Angeles, the day and year in this certificate first above written.

[Seal]                      GLADYS E. METCALF

Notary Public in and for the County of Los Angeles, California.

My Commission expires October 28, 1946.

[Endorsed]: Filed Sep 7-1943 J. F. Moroney,  
County Clerk, By M. B. Hershide, Deputy.

[Endorsed]: Filed Oct. 4, 1943 Edmund L.  
Smith, Clerk By John A. Childress, Deputy Clerk.

[14]

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[Title of Superior Court and Cause.]

DEMURRER

Defendant demurs to plaintiff's Complaint on the following grounds:

I.

The Complaint does not state facts sufficient to constitute a cause of action.

Dated: September 10, 1943.

CHARLES H. CARR

United States Attorney

WM. W. WORTHINGTON

Assistant U. S. Attorney

By: WM. W. WORTHINGTON

Attorneys for Defendant.[15]

I Hereby Certify that this Demurrer is filed in good faith; and is not filed for the purpose of delay, and in my opinion the grounds are well-taken.

WM. W. WORTHINGTON [16]



Points and Authorities to Sustain Defendant's  
Demurrer

The ground of defendant's Demurrer herein is that provided by Section 430 of the California Code of Civil Procedure.

I.

The state courts take judicial notice of federal statutes.

Daggett v. Colgan,

92 Cal. 53; 28 Pac. 51.

Spokane Falls etc. R. Co., v. Zieler,

167 U. S. 65; 42 L. Ed. 79,

II.

Plaintiff's Complaint fails to state a cause of action, because by federal law, defendant herein had the power to do each and every of the things alleged by the plaintiff as being false and fraudulent.

First and Second War Powers Act.

Title 7, U. S. C. A., Sec. 601, et seq.

Executive Order No. 9280.

III.

A federal official is not responsible because he may have acted maliciously, if he had authority and power to perform the act.

Vilas v. Spaulding, 161 U. S. 483.

Cooper v. O'Connor, 99 F.(2d) 135.

Booth v. Fletcher, 101 F.(2d) 676.

Jones v. Kennedy, 121 F.(2d) 40.

Adams v. Home Owners Loan Corporation,  
107 F(2d) 139.



## IV.

Plaintiff's Complaint wholly fails to reveal that if plaintiff had purchased 300 carloads of oranges, as alleged in paragraph VIII of his Complaint, that he would have been able to have sold them, or any part thereof, without violating the federal law, whereas in truth and [17] in fact plaintiff well knew said oranges could not be sold within the state of California, and that a sale in interstate commerce or commerce with Canada would be a violation of federal law.

Title 7, U. S. C. A., Sec. 601, et seq.

Order No. 66, being an order "Regulating the Handling of Oranges Grown in the State of California and in the State of Arizona", promulgated by the Secretary of Agriculture of the United States.

Copy of within demurrer & points & authorities received this 10th day of September, 1943. G. B. Weikert, Attorney for Plaintiff.

[Endorsed]: Filed Sep 10 4:01 PM 1943 J. F. Moroney, County Clerk By M. Enfield, Deputy.

[Endorsed]: Filed Oct. 4, 1943 Edmund L. Smith, Clerk By John A. Childress Deputy Clerk.

[18]

[Title of Superior Court and Cause.]

PLAINTIFF'S ANSWER AND OBJECTIONS  
TO PETITION FOR REMOVAL TO FEDERAL COURT

Comes Now the above named plaintiff, and for answer to the defendant's Petition for Removal of the above entitled cause to the Federal Court, and as grounds of objection to the filing, presentation or acceptance thereof, or of the bond presented therewith, alleges as follows:

I.

Plaintiff alleges that he has no information or belief sufficient to enable him an answer any of the allegations contained in paragraphs I and II of said Petition for Removal, and on that ground denies each and all of the allegations therein.

II.

Plaintiff denies, generally and specifically, each and all of the allegations contained in paragraph IV of said Petition for Removal.

III.

That said Petition for Removal does not state facts [19] sufficient to constitute grounds for removal.

IV.

That this action is between two individuals, residents of the State of California, and is not brought against an officer of the United States, and is not one arising under the Constitution, laws or treaties

of the United States, within the meaning of Section 28 of the Judicial Code of the United States, and is not a proper case for removal to the Federal Court.

V.

That the United States District Court is without jurisdiction to entertain this action.

Wherefore, plaintiff prays that said Petition for Removal be denied and dismissed; that the bond presented with said Petition be not accepted; that the above entitled Court retain jurisdiction of the above entitled action; and for such other and further relief as may be meet and proper in the premises.

Dated: September 13, 1943.

G. V. WEIKERT,

Attorney for Plaintiff.

State of California

County of Los Angeles—ss.

Alexander Chaskin being by me first duly sworn, deposes and says: that he is the Plaintiff in the above entitled action; that he has read the foregoing Plaintiff's Answer and Objections to Petition for Removal to Federal Court, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

ALEXANDER CHASKIN

Subscribed and sworn to before me this 13th day of September, 1943.

[Seal] ELEANORE SWAN

Notary Public in and for the County of Los Angeles, States of California.

Received copy of the within answer this 14 day of Sept. 1943.

CHAS. H. CARR,

U. S. Atty.

WM. W. WORTHINGTON,

Asst. U. S. Atty.

Attorney for defendant.

[Endorsed]: Filed Sep 14 1943 J. F. Moroney,  
County Clerk By J. D. John, Deputy.

[Endorsed]: Filed Oct. 4, 1943 Edmund L.  
Smith, Clerk, By John A. Childress. [20]

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In the Superior Court of the State of California  
In and For the County of Los Angeles  
Honorable Alfred L. Bartlett, Judge Presiding;  
Department No. 35. September 14, 1943

[Title of Cause.]

No. 487571

CERTIFIED COPY OF MINUTE ORDER

(Entered September 16, 1943)

Petition and bond of defendant Howard W.  
Thompson for removal to United States District

Court, Southern District of California, Central Division, comes on for hearing; G. V. Weikert appearing as attorney for the plaintiff and Charles H. Carr, United States Attorney and William W. Worthington Assistant United States Attorney for the defendant. Said petition is denied.

[Endorsed]: Filed Oct 4, 1943. [21]

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In the Superior Court of the State of California  
In and For the County of Los Angeles

Honorable Alfred L. Bartlett, Judge Presiding;

Department No. 35

September 16, 1943

[Title of Cause.]

No. 487571

CERTIFIED COPY OF MINUTE ORDER

(Entered September 20, 1943)

Demurrer of defendant to complaint comes on for hearing. Demurrer is overruled; defendant is given ten days to answer.

[Endorsed]: Filed Oct. 4, 1943. [22]

CERTIFICATE OF CLERK OF SUPERIOR  
COURT FOR COUNTY OF LOS ANGELES

No. 487571

State of California

County of Los Angeles—ss.

I, J. F. Moroney, County Clerk and Clerk of the Superior Court in and for the County and State aforesaid, do hereby certify the foregoing copies of documents consisting of the Complaint, Notice of filing and hearing petition and Petition for Removal, Bond on Removal, Demurrer, Answer and objections to petition for removal, Minute Order of September 14, 1943, denying petition for removal to the United States District Court, Southern District of California (Central Division), and Minute Order of September 16, 1943, in re demurrer, in the action of Alexander Chasking, doing business as Chaskin Citrus Co., vs Howard W. Thompson, to be a full, true and correct copy, to date, of all of the original documents on file and/or of record in this office in the above-entitled action and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Superior Court this 4th day of October, 1943.

[Seal] J. F. MORONEY,

County Clerk and Clerk of the Superior Court of  
the State of California, in and for the County  
of Los Angeles,

By F. P. CHRISMAN,  
Deputy.

[Endorsed]: Filed Oct 4-1943. [23]

In the District Court of the United States  
In and For the Southern District of California

Central Division

No. 3203 Y

ALEXANDER CHASKIN, doing business as  
Chaskin Citrus Co.,

Plaintiff,

vs.

HOWARD W. THOMPSON,

Defendant.

PETITION

To the Honorable Judges of the United States District Court, for the Southern District of California, Central Division:

Your Petitioner respectfully shows:

I.

Petitioner is the defendant in the above-entitled cause.

II.

The above suit was commenced in the Superior Court of the State of California, in and for the County of Los Angeles, on the 17th day of August, 1943.

III.

Petitioner filed a petition and bond for the removal of this cause to this court from said state court on the 7th day of September, [24] 1943, within the time provided for by the federal statute,

and also served upon plaintiff's attorney notice of the filing of said petition and bond.

#### IV.

On the 15th day of September, 1943, the Judge of said state court made and entered an Order in said cause denying said Petition For Removal.

#### V.

Petitioner filed in this court on the 4th day of October, 1943, a certified transcript of the record and proceedings in said state court, all within the thirty days provided by statute.

#### VI.

That the defendant's time to answer herein in said state court in said cause has been extended by stipulation to and including the 6th day of October, 1943. That the attorney for the plaintiff, G. V. Weikert, Esquire, has advised Wm. W. Worthington, Assistant United States Attorney, one of the attorneys for the defendant herein, that it is the purpose and intent of the plaintiff herein to prosecute said action in the State court to final judgment.

Wherefore, Petitioner Prays:

That an Order be made and entered staying all proceedings in said state court until further order from this court.



Dated: October 4th, 1943.

CHARLES H. CARR

United States Attorney

JAMES L. CRAWFORD

WM. W. WORTHINGTON

By: WM. W. WORTHINGTON

Attorneys for Petitioner [25]

### AFFIDAVIT

United States of America

Southern District of California—ss.

Wm. W. Worthington, being first duly sworn,  
deposes and says:

That he has read the foregoing petition and knows the contents thereof and that the same is true to his own knowledge except as to those matters therein alleged upon information and belief; and that as to those he believes it to be true. This verification is made by deponent as one of the attorneys of the defendant herein as the defendant is not within the State of California but is in Washington, D. C.

WM. W. WORTHINGTON

Subscribed and Sworn to before me this 4th day  
of October, 1943.

EDMUND L. SMITH,

Clerk

United States District Court

Southern District of California

[Seal] By: JOHN A. CHILDRESS

Deputy.

Received copy of the within Order to Show Cause  
& Petition this 5th day of October, 1943.

G. V. WEIKERT,

Attorney for.....

[Endorsed]: Filed Oct. 5, 1943. [26]

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[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

To Alexander Chaskin and G. V. Weikert, Esquire,

Sirs:

On the Summons and Complaint, Petition For Removal, Bond on Removal and Notice thereof, and on the Petition of Howard W. Thompson, hereto annexed, verified the 4th day of October, 1943, and it appearing to the Court that the removal of this cause to the United States District Court for the Southern District of California, Central Division from the Superior Court of the State of California, in and for the County of Los Angeles has been denied; that the prosecution of said cause may or will be continued in said state court or that a judgment of default may be entered against the defendant herein on or after the 6th day of October, 1943, which will cause the defendant irreparable injury,

[27]

It Is Ordered that the plaintiff appear in this court before me at my chambers on the second floor of the Federal Building, in the City of Los Angeles, State of California, on the 6th day of Octo-

ber, 1943, at 2:00 o'clock in the afternoon of that day, and show cause why plaintiff, his attorney and agents, and each of them, should not be specifically restrained and enjoined from prosecuting any further proceedings or taking any steps in the Superior Court of the State of California, County of Los Angeles, in the action entitled Alexander Chaskin, etc., Plaintiff, v. Howard W. Thompson, Defendant, No. 487,571.

Service of this Order on the plaintiff or his attorney, G. V. Weikert, shall be made not later than 2:00 o'clock p. m., the 5th day of October, 1943.

Dated: October 4, 1943

LEON R. YANKWICH

United States District Judge.

[Endorsed]: Filed Oct 5, 1943. [28]

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[Title of District Court and Cause.]

### ORDER

It appearing to the Court that Order To Show Cause in the above-entitled matter is now returnable at 2:00 o'clock p. m., October 6, 1943,

It Is Hereby Ordered that said Order be, and the same hereby is, returnable the 18th day of October, 1943, at 2:00 o'clock p. m. in the court room of the Honorable Leon R. Yankwich, Federal Building, Los Angeles, California.

LEON R. YANKWICH

United States District Judge

[Endorsed]: Filed Oct. 6, 1943. [29]

[Title of District Court and Cause.]

NOTICE OF MOTION TO REMAND

To the Defendant, Howard W. Thompson, and to  
His Attorneys, Charles H. Carr, United States  
Attorney, and James L. Crawford and William  
W. Worthington, Assistant United States At-  
torneys:

You, and each of you, will please take notice that on the 18th day of October, 1943, at 2:00 o'clock P. M., in the courtroom of the Honorable Leon R. Yankwich, United States District Judge, in the Federal Building, in the City of Los Angeles, State of California, the plaintiff, Alexander Chaskin, doing business as Chaskin Citrus Co., appearing specially for the purposes of this motion only, saving and reserving any and all objections which he has to the irregularities and imperfections in the mode, manner, and method of the removal papers, and expressly denying that this Court has jurisdiction of this cause, or of the plaintiff therein, [30] will move this Court to remand this cause to the Superior Court of the State of California, in and for the County of Los Angeles, from whence it was removed contrary to the order of said Superior Court denying removal.

Said motion will be made upon the grounds that this Court has no jurisdiction to hear and determine this cause; that it appears upon the face of the record herein that this cause is not one arising under the Constitution, laws or treaties of the United

States, within the meaning of Section 28 of the Judicial Code of the United States, and is not one within the original jurisdiction of this Court; and hence that this Court has no jurisdiction of this action or of the parties to this suit under said attempted removal.

Said motion will be based upon this Notice of Motion, and upon all the files, records, proceedings and papers in this action.

Dated: October 14, 1943.

G. V. WEIKERT

Attorney for Alexander Chas-  
kin, doing business as Chas-  
kin Citrus Co. [31]

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[Title of District Court and Cause.]

PLAINTIFF'S MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF  
MOTION TO REMAND

Whether a case is removable or not as arising under the laws of the United States is to be determined by the allegations of the plaintiff's complaint or petition, and if the case does not thus appear to be removable it cannot be made removable by any statement in the petition for removal or in subsequent pleadings by the defendant.

28 U.S.C.A. Sec. 71, Note 221;

Tennessee v. Union etc. Bank, (1894) 152  
U.S. 454;

Chappell v. Wentworth, 155 U.S. 102;  
Mountain View M. & M. Co. v. McFadden,  
180 U.S. 533;  
Minnesota v. Northern Securities Co., 194  
U.S. 48;  
American Well Works Co. v. Layne etc. Co.,  
241 U.S. 257;  
Great Northern R. Co. v. Alexander, 246 U.S.  
276;  
Great Northern R. Co. v. Galbreath Cattle  
Co., 271 U.S. 99; [32]  
Gully v. First Nat. Bank, (1936) 299 U.S.  
109.

“The rule has frequently been laid down that to render an action removable to a federal court, under this section, it is necessary that it could have been originally brought in the federal court.”

28 U.S.C.A. Sec. 71, Note 73, (Citing many cases)

“The only ground of jurisdiction which is or can be suggested is that the suit was one arising under the Constitution and the laws of the United States. \* \* \* \* It is the settled interpretation of these words, as used in this statute conferring jurisdiction, that a suit arises under the Constitution and laws of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or that Constitution. It is not enough, as the law now exists, that it appears that the defendant may find in the constitution or laws of the United States some ground of defense.

(Citing cases). If the defendant has any such defense to the plaintiff's claim, it may be set up in the state courts, and if properly set up, and denied by the highest court of the state, may ultimately be brought to this court for decision.

"It is well settled that the entry of a federal question into a case by way of defense, although it may present the controlling or the only disputed question, does not justify removal under section 28 of the Judicial Code."

*In Re Winn*, 213 U.S. 458.

"We consider it well settled that a cause of action does not arise under federal laws so as to justify removal, unless the plaintiff's right, to enforce which the suit is brought, arises out of and depends upon those laws, so that both in stating and in proving his case he must show that his right to recover stands upon the federal law; and that, even [33] though his complaint may disclose that the case will turn upon and be ruled by the construction and effect given to some federal law under which the defendant is claiming, the federal jurisdiction will fail." (Citing *Tennessee Union Bk.*, 152 U.S. 454, 459, 461, and other cases.)

*Venner v. N.Y. Cent. R. Co.*, (C.C.A. 6) 293 F 373, 374.

For a case involving a somewhat similar set of facts, see *Walker v. Collins*, 167 U.S. 57, where an action was brought in a state court for damages for an unlawful seizure of plaintiff's goods and chattels, and the answer of the defendants averred that



during the times mentioned in the complaint the defendants were, respectively, a marshal of the United States and his deputies and that the seizure was under authority of an order of attachment issued out of the federal court; and it was held that the case was not removable on the ground of a federal question, as such question did not appear from the plaintiff's pleading.

That the defendant is an officer of the United States, and claims to have been acting under an act of Congress in doing the acts complained of, does not authorize removal.

City of Stanfield v. Umatilla River Water Users Assn. 192 F. 596.

Peoples U.S. Bank v. Goodwin, 160 F. 727.

The mere fact that a defendant sued for malicious prosecution was an agent in the employment of the Post Office Department did not give him the right of removal.

4 Op. Atty. Gen. 300.

Where the State court denied removal and the defendant filed a petition in the Federal court to enjoin the plaintiff from proceeding further, a motion by plaintiff to remand was held to be the proper procedure. [34]

Bley v. Travelers Insurance Co., 27 F. Sup. 351.

Respectfully submitted,

G. V. WEIKERT

Attorney for Alexander Chaskin,  
doing business as Chaskin  
Citrus Co.



Due Service is Admitted of the within Notice of Motion to Remand, this 15th day of October, 1943.

CHARLES H. CARR,

United States Attorney,

By WM. W. WORTHINGTON,

Assistant United States

Attorney,

Attorneys for Defendant.

[Endorsed]: Filed Oct 15, 1943. [35]

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At a stated term, to wit: The September Term, A. D. 1943 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 18th day of October in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Leon R. Yankwich, District Judge

No. 3203-Y-Civil

ALEXANDER CHASKIN, doing business as  
CHASKIN CITRUS CO.,

Plaintiff,

vs.

HOWARD W. THOMPSON,

Defendant.

ORDER GRANTING PETITION FOR  
RESTRAINING ORDER

This cause coming on for hearing on return of order of October 5, 1943, to plaintiff to show cause why a restraining order should not issue, restraining plaintiff from proceeding further in the Superior Court of the State of California in action 487571; and hearing on motion of plaintiff to remand cause to Superior Court of the State of California; G. V. Weikert, Esq., appearing as counsel for plaintiff; Wm. W. Worthington, Esq., Assistant U. S. Attorney, appearing for the defendant; James Marquardt, Court Reporter, being present and reporting the proceedings:

Attorney Weikert presents motion. Attorney Worthington replies.

The Court states complaint states a cause of action under color of office, and grants restraining order.

The prayer of the petition is granted and restraining order granted.

Motion to remand is denied. [36]

[Title of District Court and Cause.]

ORDER DENYING MOTION TO REMAND

A Motion To Remand the above-entitled case to the Superior Court of the State of California, County of Los Angeles, having duly come on for hearing before the Honorable Leon R. Yankwich, United States District Judge, in his court room in the Federal Building, Los Angeles, California, at the hour of 2:00 o'clock p. m. on the 18th day of October, 1943, and the Court after hearing G. V. Weikert, Esquire, attorney for plaintiff on behalf of said Motion, and Wm. W. Worthington, Assistant United States Attorney, in opposition thereto, and the Court being fully advised in the premises and due consideration having been given to the matter.

It Is Ordered that said Motion To Remand the above-entitled [40] cause to the Superior Court of the State of California, County of Los Angeles, be, and the same is hereby, in all respects denied.

Dated: October 22, 1943.

LEON R. YANKWICH

United States District Judge

Approved as to form according to Rule 8.

.....  
G. V. Weikert,  
Attorney for plaintiff.

Received copy of the within Proposed Order this  
20th day of Oct., 1943.

G. V. WEIKERT,  
Attorney for Plaintiff.

[Endorsed]: Filed Oct. 22, 1943. [41]

[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

An Order to Show Cause why an injunction should not be granted herein against the defendant Alexander Chaskin, his attorney G. V. Weikert, Esquire, and said Chaskin's agents, having duly and regularly come on for hearing on the 18th day of October, 1943, and argument having been had by the respective parties hereto, and the court being fully advised in the premises, hereby makes the following Findings of Fact and Conclusions of Law in said cause:

### FINDINGS OF FACT

#### I.

This action is brought by the plaintiff against the defendant herein for damages. Plaintiff and defendant are each residents of the City and County of Los Angeles, State of California. [42]

#### II.

The above suit was commenced in the Superior Court of the State of California, in and for the County of Los Angeles on the 17th day of August, 1943.

#### III.

The defendant herein filed a Petition and Bond for the removal of this cause to the United States District Court for the Southern District of California, on the 7th day of September, 1943, and

within the time provided for by the federal statute, and also served upon plaintiff's attorney notice of the filing of said Petition and Bond.

#### IV.

On the 15th day of September, 1943, Honorable Alfred Bartlett, Judge of said state court, made and entered an Order in said cause denying said Petition for removal.

#### V.

The defendant herein filed in this court on the 4th day of October, 1943, a certified transcript of the record and proceedings aforesaid in said state court, all within the thirty days provided by statute.

#### VI.

That a Motion To Remand said cause to said state court was duly brought on for hearing in this court on the 18th day of October, 1943, by plaintiff, which was denied.

#### VII.

The Complaint of the plaintiff herein alleges, among other things, as follows, to-wit:

“That defendant called upon and communicated with said packers and brokers and sought to induce and coerce them to breach their then existing contractual and business relations with plaintiff, by falsely, fraudulently and maliciously stating and representing to such packers and brokers that as an employee of the United States Department of [43] Agriculture he had the lawful power and authority to cause them, and each of them, to suffer great loss,

injury and damage by causing priorities for farming and packing equipment, machinery, and supplies to be withheld from and denied to them, and by causing their gasoline rations to be curtailed and restricted, and by causing suits and proceedings to be brought against them for various penalties and forfeitures, whenever he chose so to do, and by stating, representing and threatening that he would exercise such pretended power and authority against them unless they breached their said contracts and agreements with plaintiff, and terminated their said business relations with plaintiff, and refrained from selling to plaintiff or procuring for him any oranges whatever."

## CONCLUSIONS OF LAW

As conclusions of law under the provisions of law applicable to the foregoing Findings of Fact, the Court concludes as follows:

### I.

That it has jurisdiction over all the parties and subject matter.

### II.

That the defendant is entitled to a permanent injunction restraining and enjoining the plaintiff, his agents, and his attorney G. V. Weikert, Esquire, and each of them from prosecuting any further proceedings or taking any steps in the Superior Court of the State of [44] California, in and for the County of Los Angeles, in the action entitled Alexander Chaskin, etc., plaintiff, v. Howard W. Thompson, defendant, No. 487571.

Dated: November 1, 1943.

LEON R. YANKWICH

United States District Judge

Presented by:

CHARLES H. CARR

United States Attorney

JAMES L. CRAWFORD

WM. W. WORTHINGTON

Assistant U. S. Attorneys

By: WM. W. WORTHINGTON

Attorneys for Defendant.

Approved as to form according to Rule 8.

.....

G. V. Weikert,  
Attorney for plaintiff.

Received copy of the within proposed Findings of  
Fact and Conclusions of Law this 22d day of Oct.,  
1943.

G. V. WEIKERT,

Attorney for Plaintiff.

[Endorsed]: Filed Nov. 1, 1943. [45]

In the District Court of the United States  
In and For the Southern District of California

Central Division

No. 3203-Y Civil

ALEXANDER CHASKIN, doing business as  
Chaskin Citrus Co.,

Plaintiff,

vs.

EDWARD W. THOMPSON,

Defendant.

### DECREE OF INJUNCTION

An Order To Show Cause why plaintiff, his attorney and agents, and each of them, should not be specifically restrained and enjoined from prosecuting any further proceedings or taking any steps in the Superior Court of the State of California, in and for the County of Los Angeles, in the action entitled Alexander Chaskin, etc., plaintiff, v. Howard W. Thompson, defendant, No. 487571, having come on for hearing before the Honorable Leon R. Yankwich, United States District Judge, in his courtroom in the Federal Building, Los Angeles, California, at 2:00 o'clock p. m. on the 18th day of October, 1943, and after hearing Wm. W. Worthington, Assistant United States Attorney, on behalf of said Order, and G. V. Weikert, Esquire, attorney for plaintiff, in opposition thereto, and the Court being fully advised in the premises and due



consideration having been given to the matter, and it appearing to the court that: [46]

(a) Plaintiff has filed an action for damages against defendant in the Superior Court of the State of California, in and for the County of Los Angeles, on the 17th day of August, 1943, and

(b) Defendant duly filed his petition and bond for removal of said action from said state court to this court on the 7th day of September, 1943, and that due notice thereof was given to plaintiff and said state court, and

(c) On the 4th day of October, 1943, a certified transcript of the record and proceedings in said action in said state court were filed in the office of the Clerk of the United States District Court for the Southern District of California, Central Division, and

(d) This court now has jurisdiction of said action, and plaintiff, his agents and attorneys should not be allowed to proceed in said state court action.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that plaintiff herein, Alexander Chaskin, and G. V. Weikert, Esquire, his attorney, and agents of said Alexander Chaskin, and each of them, be, and they are hereby, restrained and enjoined from prosecuting any further proceedings or taking any steps in the Superior Court of the State of California, in and for the County of Los Angeles, in the action entitled Alexander Chaskin, etc., plaintiff, v. Howard W. Thompson, defendant, No. 487571.

Dated: November 1, 1943.

LEON R. YANKWICH

United States District Judge

Approved as to form according to Rule 8.

.....

G. V. Weikert,  
Attorney for plaintiff.

Judgment entered Nov. 1, 1943. Docketed Nov. 1,  
1943 C. O. Book 21, Page 668.

EDMUND L. SMITH,

Clerk,

By LOUIS J. SOMERS,

Deputy.

Recieved copy of the within proposed decree of  
injunction this 25th day of Oct., 1943.

G. V. WIEKERT,

Attorney for Plaintiff.

[Endorsed]: Filed Nov. 1, 1943. [47]

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[Title of District Court and Cause.]

WRIT OF INJUNCTION

United States of America,  
Southern District of California,  
Central Division.—ss.

The President of the United States of America to  
Alexander Chaskin, G. V. Weikert, his attor-  
ney, and Agents of said Alexander Chaskin,

## GREETINGS:

Whereas, the above-entitled action was commenced in the Superior Court of the State of California, in and for the County of Los Angeles, by the above-named plaintiff, Alexander Chaskin, by his attorney G. V. Weikert, and

Whereas, said action was transferred from said Superior Court to the District Court of the United States, in and for the Southern District of California, Central Division, and the above-named defendant, Howard W. [48] Thompson has obtained a Decree of Injunction, as heretofore filed in the office of the Clerk of the above-entitled court on the 1st day of November, 1943.

Now, Therefore, We, having regard to the matters in said Complaint of the plaintiff, and Petition for Removal of the defendant, contained and alleged, Do Hereby Command and Strictly Enjoin You, Alexander Chaskin, and you, G. V. Weikert, his attorney, and agents of said Alexander Chaskin, and each of you from prosecuting any further proceedings or taking any steps in the Superior Court of the State of California, in and for the County of Los Angeles, in the action entitled Alexander Chaskin, etc., plaintiff, v. Howard W. Thompson, defendant, No. 487571;

Whereof fail not under penalty of the law thence ensuing.

Witness the Honorable Leon R. Yankwich, Judge,  
United States District Court, this 1st day of No-  
vember, 1943.

[Seal]

EDMUND L. SMITH,

Clerk,

United States District Court,  
Southern District of Califor-  
nia.

By: JOHN A. CHILDRESS

Deputy.

(Affidavit of Service by Mail.)

[Endorsed]: Filed Nov. 1, 1943. [49]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that Alexander Chaskin, doing business as Chaskin Citrus Co., plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the minute order made and entered in this action on October 18, 1943, granting the petition of the above named defendant for an order staying proceedings in said action in the Superior Court of the State of California in and for the County of Los Angeles and enjoining the above named plaintiff from prosecuting the same in said State court; and from the judgment or decree of injunction entered in this action on

November 1, 1943, and the write of injunction issued thereon.

G. V. WEIKERT

Attorney for Appellant.

Address: 818 Oviatt Building,

Los Angeles, California.

[Endorsed]: Filed & Mailed copy to Charles H. Carr, Attorney for Defendant Nov. 9, 1943, Edmund L. Smith, Clerk, By John A. Childress, Deputy Clerk. [51]

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[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF  
CONTENTS OF RECORD ON APPEAL

The appellant hereby designates for inclusion in the record on appeal herein the complete record and all the proceedings in this action, including the minutes and minute order of October 18, 1943.

G. V. WEIKERT

Attorney for Appellant.

[Endorsed]: Received copy of the within Designation this 9 day of Nov., 1943. Chas. H. Carr, U. S. Attorney, Wm. W. Worthington, Asst. U. S. Attorney. Filed Nov. 15, 1943 Edmund L. Smith, Clerk, By John A. Childress, Deputy Clerk. [54]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 54 inclusive contain full, true and correct copies of: Complaint; Notice, Motion and Petition for Removal; Bond on Removal; Demurrer; Plaintiff's Answer and Objections to Petition for Removal to Federal Court; Minute Orders of Superior Court Entered September 16, 1943 and September 20, 1943; Petition; Order to Show Cause; Order; Notice of Motion to Remand; Minute Order Entered October 18, 1943; Answer; Order; Findings of Fact and Conclusions of Law; Decree of Injunction; Writ of Injunction and Affidavit of Service; Notice of Appeal; Cost Bond on Appeal; Designation of Record on Appeal which constitute the record on Appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for comparing, correcting and certifying the foregoing record amount to \$8.95 which sum has been paid to me by Appellant.

Witness my hand and the seal of said District Court this 16 day of December, 1943.

[Seal]

EDMUND L. SMITH,

Clerk

By THEODORE HOCKE

Deputy Clerk.

[Endorsed]: No. 10639 United States Circuit Court of Appeals for the Ninth Circuit. Alexander Chaskin, Doing Business as Chaskin Citrus Co., Appellant vs. Howard W. Thompson, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed December 18, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

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In the United States Circuit Court of Appeals  
For the Ninth Circuit

No. 10639

ALEXANDER CHASKIN, doing business as  
Chaskin Citrus Co.,

Plaintiff and Appellant,

vs.

HOWARD W. THOMPSON,

Defendant and Appellee.

APPELLANT'S STATEMENT AND  
DESIGNATION

Pursuant to Rule 19 of the Rules of the above entitled Court, the appellant herein states that the points on which he intends to rely on this appeal are as follows:

1. The United States District Court for the Southern District of California, Central Division

has no jurisdiction over the action, or over the parties thereto.

2. The said United States District Court had no jurisdiction to make or enter the order or the judgment appealed from.

3. The evidence is insufficient to support and does not support the findings of fact, or the conclusions of law, or the order or judgment of said United States District Court.

4. The findings of fact do not support the conclusions of law or the order or judgment of said United States District Court.

5. The conclusions of law do not support the order or judgment of said United States District Court.

6. The said United States District Court erred in denying appellant's motion to remand the cause to the Superior Court of the State of California in and for the County of Los Angeles.

And the appellant hereby designates the parts of the record which he thinks necessary for the consideration of the foregoing points, as follows:

Documents	Page No.
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Notice, Motion and Petition for Removal.....	7
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Demurrer .....	15
Answer and Objections to Petition for removal, Plaintiff's .....	19
Minute Order (Superior Court) Entered Sep- tember 16, 1943 .....	21



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G. V. WEIKERT

Attorney for Appellant.

G. V. Weikert

Suite 818 Oviatt Building

617 South Olive Street

Los Angeles

TRinity 7722

Received Copy of the Within Appellant's Statement and Designation This 27 Day of December 1943.

CHARLES H. CARR

United States Attorney

Attorney for Defendant &

Appellee

[Endorsed]: Filed Dec. 31, 1943. Paul P. O'Brien, Clerk.

